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suit as one for such redemption, he altered the nature of the suit so as far it prayed for possession irrespective of defendant's kánams, to one for redemption of the kánams proved by the defendant. If on, appeal, the kánams set up by the defendant No. 1 are held to bind the plaintiff, he may be able to say that he did not offer to redeem them, and then the defendant would lose the advantage of the decree which, if the suit was a redemption suit, he would have been entitled to, viz., that if plaintiff did not redeem within a given time his right should be barred.

The plaintiff ought to decide for himself, while framing his plaint, whether he is to sue to redeem or to eject, and value his suit accordingly. It is certainly irregular without defendant's consent, to allow a suit to eject to be treated as a suit to redeem, without amending the plaint. The right to amend ceases with the first hearing, and it was again irregular to treat the plaint as amended according to the result of the findings at the conclusion of the trial.

We reverse the order of the Officiating District Judge, dated the 19th December 1884, and direct the appeal to be restored to the file of the District Judge to be disposed of *de novo*.

The costs of this appeal will be provided for in the revised decree.

APPELLATE CIVIL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Parker.

1885. October 27.

VENKATANÁRÁYANA (PLAINTIFF), APPELLANT,

and

SUBBARÁYUDU AND OTHERS (DEFENDANTS), RESPONDENTS.*

Regulation XXIX of 1802—*Karnam—Incapacity of next heir—Minority—Appointment by landholder of successor without proof before Zila Court of incapacity of heir.*

A karnam in a zamíndárí village having died leaving a minor son, the landholder appointed the brother of the late karnam to the office.

In a suit brought by the son, after attaining majority, to establish his right to the office and to recover its emoluments:

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* Appeal 54 of 1885.

Held, that, under the provisions of Regulation XXIX of 1802, he was not entitled to recover.

Section 7 of the Regulation provides that, in filling the office of karnam, the heirs of the preceding karnam shall be chosen by the landholders except in cases of incapacity on proof of which before the Judge of the Zila the landholders shall be free to exercise their discretion in the nomination of persons to fill vacancies.

Held, that where the incapacity arose from minority about which there was no dispute an appointment by a landholder made without proof before the Court of the incapacity of the heir was valid.

THIS was an appeal from the decree of E. C. Johnson, Acting District Judge of Vizagapatam, in suit 19 of 1883.

The plaintiff, Reparti Venkatanáráyana, sued (1) Reparti Subbaráyudu and (2) Reparti Venkatanáráyana, to have his claim established to the office of karnam of certain villages in the zamíndárí of Vizianagaram, and to recover the emoluments of the office. He alleged that his father was the sole mirásí karnam in 1864 when he died. Plaintiff being then a minor, his father's brother, Appaya, was appointed, and defendant No. 2 was appointed as a joint karnam by the Mahárájá of Vizianagaram. On the death of Appaya, his brother, defendant No. 1, was appointed in his place. Plaintiff contended that he, being now of age, was entitled to recover the office from the defendants; he had applied to the Mahárájá of Vizianagaram for the office without success in 1882. Defendant No. 1 denied plaintiff's right to sue. Defendant No. 2 alleged, *inter alia*, that his family had a joint mirásí right with plaintiff's family, and denied plaintiff's right to question the validity of his appointment.

The Mahárájá of Vizianagaram was made a defendant in the suit, and pleaded, *inter alia*, that he was entitled to appoint as many karnams as were required to do the work of the office under Regulation XXIX of 1802, and that, as one of plaintiff's family was in office, plaintiff had no right to sue.

The District Judge found that the family of defendant No. 2 had an hereditary claim to the office, and had enjoyed half of the emoluments thereof, and held that the appointment of defendant No. 2 was legal.

As to the appointment of defendant No. 1, he ruled that it also was valid, citing *Oolaty Bhoopatyrauze* v. *Vuddy Putty Gaurrauze*.(1)

(1) M.S.D., 1853, p. 91.

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The suit was dismissed.

The facts and arguments appear sufficiently, for the purpose of this report, from the judgment of the Court (Muttusámi Ayyar and Parker, JJ.).

Mr. *Michell* for appellant.

Hon. *Rámá Ráu* for respondent No. 2.

Mr. *Wedderburn* for respondent No. 3.

Respondent No. 1 did not appear.

JUDGMENT.—The main question for decision in this appeal is whether the appellant has established an exclusive title to the office of karnam for the villages of Vepada and Bakkunaidupeta.

The respondents Nos. 1 and 2 denied his exclusive title, and contended that they had joint mirási rights with him. The Judge has upheld their contention, and we consider that upon the evidence on record he has come to a correct conclusion. It is not denied that the respondent No. 2 and his father have been in possession of about a moiety of the lands attached to the office from 1844. It is stated in the plaint that the respondent No. 2 is a distant kinsman of the appellant's family. Although the names of the ancestors of respondent No. 2 do not appear in the accounts relating to the lands in dispute prior to 1844, yet exhibit II shows that his branch of the family was in possession in that year. It appears from exhibit D that his father's name was entered in 1862 as one of the karnams who then had mirási rights in the village of Vepada. It would seem, however, that though his father was entered as a person who had mirási right, he had not been doing work as karnam of Vepada; but that by a family arrangement he had been doing duty as karnam of Velupati, though he had been enjoying a portion of the lands attached to the office now in suit. In 1872 respondent No. 2 was appointed as a joint karnam by the Mahárájá of Vizianagaram on the ground that the then working karnam, Repati Appaya, did not conduct his duties properly, and that respondent No. 2, who was in possession of a portion of the mirási lands, should also do the duty devolving on him as a mirásidár. From 1872 the respondent No. 2 has been doing duty as one of the karnams of the villages in dispute. These facts appear to us to warrant the conclusion at which the Judge has arrived. It is urged for the appellant that the appointment of respondent No. 2 was contrary to the provisions of s. 7, Regulation XXIX of 1802. It is provided by that section that "in filling

vacancies in the office of karnam, the heirs of the preceding karnam shall be chosen by the landholders except in cases of incapacity, on proof of which before the Judge of the Zila, the said landholders shall be free to exercise their discretion in the nomination of persons to fill vacancies."

It is not denied that at the date of the appointment the appellant was a minor, and we must take it as finally settled by the decision of this Court in *Venkata* v. *Rámá* (1) that minority is a ground on which the heir may be lawfully passed over and a selection made by the landholder from among the other members of the family. It is then said by the learned counsel for the appellant that the Regulation requires that the incapacity should be proved before the Zila Judge, and that it was not complied with in the case before us. As the incapacity arose from minority, and as it is not denied that the respondent No. 2 was then a minor, we do not think that section has any application to a case in which there could be no dispute as to the incapacity of the legal heir. Thus, it is clear upon the evidence that this respondent's branch of the family has been in enjoyment of the lands in his possession for upwards of forty years, that his father was entered as a co-mirásídár as early as 1862, and that his appointment as joint karnam was made in circumstances which renders it legal. We see, therefore, no ground to hold that the suit was not properly dismissed as against him. Nor do we consider the claim to be good as against respondent No. 1, though he has not appeared to oppose this appeal. On the death of appellant's father, Joganna, between 1862 and 1865, appellant's uncle, Appaya, was appointed as the adult male member of the family, competent to perform the duties of the office of karnam, the appellant being a minor at that time. After Appaya's death, respondent No. 1, his brother, was appointed to succeed him, and this appointment was also made during the appellant's minority. We consider that it was a valid appointment for the reasons already mentioned.

We are of opinion that this appeal must fail, and we dismiss it with two sets of costs in favor of the respondents Nos. 2 and 3.

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(1) I.L.R., 8 Mad., 249.